



California State Board of Equalization

Taxpayers' Rights Advocate's

2012 • 2013 ANNUAL REPORT

PROPERTY AND BUSINESS TAXES

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EXECUTIVE DIRECTOR
Cynthia Bridges

February 2014

Ms. Cynthia Bridges
Executive Director

Dear Ms. Bridges:

I am pleased to present the Taxpayers' Rights Advocate's 2012-13 Property and Business Taxes Annual Report. This report:

- Highlights accomplishments of the Taxpayers' Rights Advocate Office during the past year;
- Describes our involvement in important new projects to assist taxpayers;
- Identifies current issues we are working to resolve; and
- Contains examples of cases illustrating the services our office provides.

Economic indicators tell us that California's economy is showing signs of a recovery. While tax revenues have increased, some taxpayers and individuals are still struggling. Regardless of the state of California's economy, all tax and fee payers are afforded protection under the Taxpayers' Bills of Rights, and should expect to be treated with professionalism, respect, and cooperation when they come into contact with BOE staff. A primary focus of the Taxpayers' Rights Advocate Office is the importance of educating all BOE employees on the importance of taxpayer rights and making sure they understand the important role they play in ensuring taxpayers' rights are protected during the assessment and collection of taxes and fees.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Todd C. Gilman", with a stylized flourish at the end.

Todd C. Gilman
Taxpayers' Rights Advocate

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TAXPAYERS' RIGHTS ADVOCATE OFFICE

VISION

To be the clear and trusted voice of reason and fairness when resolving issues between taxpayers¹ and the government.

MISSION

To positively affect the lives of taxpayers by protecting their rights, privacy, and property during the assessment and collection of taxes.

GOALS

- To ensure that taxpayers coming to the Taxpayers' Rights Advocate Office with problems that have not been resolved through normal channels have their concerns promptly and fairly addressed.
- To identify laws, policies, and procedures that present barriers or undue burdens to taxpayers attempting to comply with the tax laws; to bring those issues to the attention of Board of Equalization (BOE) and county management; and to work cooperatively on making changes to laws, policies, and procedures where necessary.
- To meet taxpayer needs by opening appropriate channels of communication, providing education, and finding creative solutions to unresolved problems.
- To promote BOE staff's commitment to honor and safeguard the rights of taxpayers.

¹ The term "taxpayers" in this publication means payers of sales and use taxes, special taxes and fees, and property taxes.

PROFILE

Taxpayers' Bills of Rights Mandate a Taxpayers' Rights Advocate

In January 1989, the *Harris-Katz California Taxpayers' Bill of Rights* (see [Appendix 1](#)) was placed into law to ensure that the rights, privacy, and property of California taxpayers were adequately protected in the assessment and collection of sales and use taxes. All holders of seller's permits and consumer use tax accounts, which currently include approximately 929,000 taxpayers, are provided protection under this law.

Effective January 1993, the Special Taxes Bill of Rights expanded the Bill of Rights statutory authority to special tax and fee programs administered by the BOE, currently affecting approximately 1,033,000 taxpayers in 29 programs. Since these programs primarily affect business owners, this publication refers to both Bills of Rights generally as the Business Taxpayers' Bill of Rights, covering both sales and use taxes and the various special taxes and fees.

The *Morgan Property Taxpayers' Bill of Rights* (see [Appendix 2](#)) was added in January 1994, governing the assessment, audit, and collection of property tax, with the goal of ensuring that millions of taxpayers receive fair and uniform treatment under the property tax laws.

Each Taxpayers' Bill of Rights provides for a Taxpayers' Rights Advocate (Advocate). For instance, the designation of an Advocate for sales and use tax matters is found in Revenue and Taxation Code section 7083 (see [Appendix 1](#)), and beginning with section 5904 for property tax issues (see [Appendix 2](#)).

A summary of the taxpayers' rights statutes that apply to the tax and fee programs administered by the BOE can be found in BOE [publication 70](#), *Understanding Your Rights as a California Taxpayer*.

Legal Responsibilities of the Taxpayers' Rights Advocate

The responsibilities of the Advocate are specifically delineated in the law. Consistent with the Taxpayers' Bills of Rights, the Advocate:

- Facilitates resolution of taxpayer complaints or problems, including complaints regarding unsatisfactory treatment of taxpayers by BOE employees;
- Monitors various BOE tax and fee programs for compliance with the Taxpayers' Bill of Rights and recommends new procedures or revisions to existing policy to ensure fair and equitable treatment of taxpayers;
- Ensures taxpayer educational materials are clear and understandable; and
- Coordinates statutory Taxpayers' Bill of Rights hearings to give the public an opportunity to express their concerns, suggestions, and comments to the Board Members.

How the Taxpayers' Rights Advocate Office Fulfills its Legal Responsibilities

Facilitates resolution of taxpayer complaints or problems

The Taxpayers' Rights Advocate (TRA) Office generally assists taxpayers who:

- Have been unable to resolve a matter through normal channels;
- Want information regarding BOE procedures;
- Claim their rights have been violated in either the audit or compliance areas; or
- Seek confirmation that staff action is lawful and consistent with BOE policy.

The TRA Office provides assistance to taxpayers and BOE staff by facilitating better communication between these parties, which helps eliminate potential misunderstandings. Taxpayers are provided information on policies and procedures so they can be better prepared to discuss and resolve their issues with staff.

Occasionally a taxpayer or a BOE employee contacts the TRA Office complaining about discrimination or harassment. TRA Office staff work with appropriate BOE management to resolve the complaint. Likewise, alleged taxpayer discrimination or sexual harassment toward BOE staff is not tolerated and is appropriately addressed.

Monitors programs and recommends policy or procedural changes

In cases where the law, policy, or procedures do not currently allow any change to the staff's actions, but a change to the law, policy, or procedure appears warranted, the TRA Office actively works toward clarification or modification. Several of the past recommendations for policy or procedural changes, suggestions for enhancements to staff training materials, and proposals for legislative change have resulted from direct contacts with taxpayers.

Ensures information and guidance provided is easy to understand

The TRA Office suggests new legislation, participates in task forces and committees charged with procedure and regulation revisions, and routinely reviews proposed revisions to taxpayer educational materials to ensure they are easy to understand. TRA Office staff assist in providing information to the public at large through participation in public forums and business fairs.

Coordinates Taxpayers' Bill of Rights hearings

The TRA Office is responsible for making arrangements, in cooperation with the Board Proceedings Division, for yearly property tax and business taxes hearings in both Northern and Southern California, including publicizing the hearings. Immediately after the hearings, the TRA Office works with appropriate areas of the BOE or counties to address issues and concerns conveyed to the Board Members by presenters and provides follow-up reports to the Members when requested.

Cooperation with Advocates of Other Government Agencies

The BOE's Advocate meets on a regular basis with the Advocates from the Employment Development Department, the Franchise Tax Board, and the Internal Revenue Service to discuss common problems and systemic issues facing California taxpayers. These meetings, along with close working relationships among the advocate offices, have allowed all the tax agencies serving California taxpayers to have a better understanding of taxpayer issues. California taxpayers also benefit from the TRA Office's ongoing

relationships with the other California Advocates because of the enhanced opportunities for outreach to community groups provided by contacts developed by all the Advocates.

Differences Between Implementation of the Business and the Property Taxpayers' Bills of Rights

The major difference for the TRA Office between the Business Taxpayers' Bill of Rights and the Property Taxpayers' Bill of Rights is in the resolution of taxpayer complaints, as outlined below.

Business taxes

The BOE is responsible for assessing and collecting business taxes (sales and use taxes and special taxes and fees). The Executive Director has administrative control over these functions and the staff carrying them out. The Advocate reports directly to the Executive Director and is independent of the business and property taxes programs. When complaints relating to the BOE's business taxes programs are received in the TRA Office, the office has direct access to all BOE information and staff involved in the taxpayers' issues. The TRA Office acts as a liaison between taxpayers and BOE staff in resolving problems. If the Advocate disagrees with actions taken by BOE staff and is unable to resolve the situation satisfactorily with program management, the issue is brought to the Executive Director for resolution.

Property tax

In contrast to the way the TRA Office resolves business taxes issues, property tax cases are primarily resolved directly with the county assessors, tax collectors, auditor-controllers, and county boards of supervisors (all elected officials), as well as assessment appeal boards. Additionally, the TRA Office works with the BOE's Legal Department and the County Assessed Properties Division when required. The TRA Office also works cooperatively with the California Assessors' Association on statewide issues. Although the TRA Office does not have the legal authority to overturn local actions, TRA Office staff are generally successful in soliciting cooperation and ensuring that taxpayers receive proper treatment under the law. In cases where there is no procedural or legal authority to

remedy a problem—and a change does appear justified—the TRA Office recommends specific policy, procedural, and/or legislative changes.

The *Business Taxes Issues and Property Tax Issues* chapters of this report include examples of how taxpayers' complaints are resolved in each of these areas.

PUBLIC OUTREACH

The public becomes aware of the services offered by our office in a number of ways. For instance, information is included about the TRA Office in many BOE publications, the public can learn about and contact the office via the BOE website or by telephone, and TRA Office staff members make presentations at public events.

Publications

- Information about specific taxpayers' rights under the law and the Advocate's role in protecting those rights is contained in [publication 70](#), *Understanding Your Rights as a California Taxpayer* (September 2011), which is available in all BOE offices and on the BOE's website.
- New this year, [publication 231](#), *Hit the Wall Trying to Solve Your Tax Problem? We Can Help* (October 2012), is a brochure that briefly summarizes how the TRA Office can help when normal channels do not work. Publication 231 is provided at many public events and is available on the BOE website.
- Also new this year, [publication 215](#), *Free Legal Help ... Do You Qualify?* (December 2012), explains to prospective clients what help is available from the Tax Appeals Assistance Program, which is overseen by the TRA Office.
- [Publication 145](#), *California Taxpayer Advocates—We're Here for You* (March 2010), provides contact information for the Advocates from the Board of Equalization, Franchise Tax Board, Employment Development Department, and Internal Revenue Service. Publication 145 is posted on the websites of the participating state agencies and the California Tax Service Center, www.taxes.ca.gov (search for "Your Rights").
- Many BOE publications prepared for permit or license holders reference the TRA Office's toll-free telephone number.
- The TRA Office's toll-free number is printed on the BOE's permits and licenses.
- Articles reminding taxpayers about their rights and referencing [publication 70](#) are published each year in BOE newsletters.
- Contact information for key TRA Office staff can be found at the back of this Annual Report.

Email and Telephone Contacts

- The TRA Office's webpage, www.boe.ca.gov/tra/tra.htm, can be accessed from any page of the BOE's website. The webpage contains a video message from the Advocate introducing the TRA Office and provides a means for taxpayers to communicate with the TRA Office directly via email.
- The TRA Office's toll-free number is included as an option on the automated phone tree for all field offices in the Second and Third Equalization Districts.

Public Events

The public learns about the services of the TRA Office at the following types of events:

- Meetings of the Board of Equalization: The Advocate or a TRA Office staff member is present and available to answer questions or assist taxpayers arriving for their hearings before the Board Members in Sacramento, and is available by telephone to assist taxpayers at Board meetings held in other cities.
- Board Member-sponsored events: The Advocate or designee attends Small Business Fairs and Seminars and Nonprofit Seminars throughout the state. At these Board Member-sponsored events, the TRA Office interacts with business owners and charitable organization representatives, makes presentations, and provides written materials about the TRA Office.
- Non BOE-sponsored events: Direct contacts with the public and some presentations are made at conventions, fairs, and conferences sponsored by consortiums of industry or business groups to assist California business owners, such the IRS Nationwide

Tax Forum, the annual meeting of the California Tax Bar and California Tax Policy Conference, and the California Small Business Day in Sacramento. The BOE Advocate also partners with the other California taxpayer advocates to make presentations at meetings of individual business groups and tax professionals.

CONTACTS RECEIVED IN 2012-13

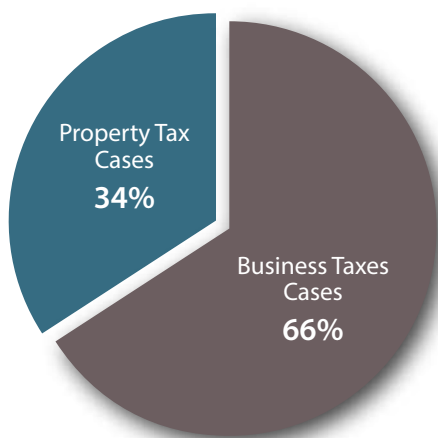
Cases

The TRA Office worked 972 cases in fiscal year 2012-13 compared to 999 cases in the previous fiscal year. This year's composition of cases was similar to last year's. The TRA Office caseload was comprised of 66 percent business taxes cases and 34 percent property tax cases; last year, the mix was 64 percent business taxes cases and 36 percent property tax cases.

Increasing each year for the past five years, the BOE website accounted for the largest source of referrals for all TRA Office cases. In fiscal year 2012-13, taxpayers indicated they learned about the TRA Office via the Internet in 49 percent of the property tax cases and in 49 percent of the business taxes cases. The *Property Tax Issues and Business Taxes Issues* chapters include listings of other important means by which taxpayers learned about the TRA Office.

Telephone Calls

Telephone call volume in fiscal year 2012-13 decreased from last year, at an average of 801 calls per month (not including calls that resulted in new cases), compared to 866 calls per month in fiscal year 2011-12. Due to the broad availability of the TRA Office's toll-free telephone number, as described above, the office receives a large number of contacts from taxpayers and others who are either seeking general information about a tax program or the application of tax law, or who have not yet attempted to resolve their disagreements with the BOE through normal channels. Some callers have questions or concerns that need to be addressed by another state agency such as the Franchise Tax Board. TRA Office staff responds by directing the caller to the appropriate BOE section, individual, information resource such as the BOE website, or to the appropriate state agency.



PROPERTY TAX ISSUES

CASE RESOLUTION

Property owners throughout the state contact the Taxpayers' Rights Advocate (TRA) Office for assistance and information. Although primary contact is with individual taxpayers, cases also originate from contact with attorneys, brokers, lenders, title and escrow companies, and government officials such as assessors, tax collectors, recorders, auditor-controllers, county supervisors, Board Members, and legislators.

The variety of issues represented by the cases require that technical advisors in the TRA Office have broad knowledge and experience in property assessment and taxation. Since the technical advisors are appraisers by profession with experience in a county assessor's office or at the Board of Equalization (BOE), they can quickly determine how an issue should be resolved.

About the Property Tax Case Statistics

County of origin

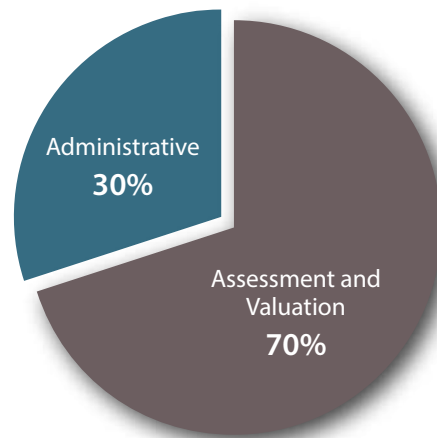
The TRA Office worked 326 property tax cases in fiscal year 2012-13 compared to 357 cases in the previous fiscal year. The TRA Office tracked the number of cases by county of origin and found, for the most part, that the population of the county tends to determine the number of cases from each county.

Ten counties represented 67 percent of the cases while those ten counties represent 71 percent of the state's population. The ten counties include Alameda, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, and Santa Clara. Most counties had at least one contact with the TRA Office.

The overwhelming majority of property tax cases are resolved in conjunction with local county assessors, tax collectors, and assessment appeals boards. The remaining cases are resolved through state agencies such as the BOE or the State Controller's Office. Multiple offices are often involved in the resolution of taxpayers' cases.

Types of cases

In fiscal year 2012-13, 70 percent of property tax cases were in the assessment and valuation category which includes topics such as value reductions, changes in ownership, appraisal methodology, exclusions, exemptions, assessment appeals, new construction, general property tax information and definitions, and actual enrollment of values. The administrative category, making up the remaining 30 percent, includes topics such as creating and mailing tax bills and refunds, waiving penalties, and public access to data.



Issues related to the decline in the real estate market were again the primary reason that taxpayers contacted the TRA Office.

Two specific change in ownership exclusion issues that are tracked each year, base year value transfers between parents and children and base year value transfers for taxpayers 55 years of age or older or persons severely and permanently disabled (Revenue and Taxation Code sections 63.1 and 69.5 respectively), accounted for eleven percent of the total cases in fiscal year 2012-13 compared to eight percent of the total caseload for fiscal year 2011-12.

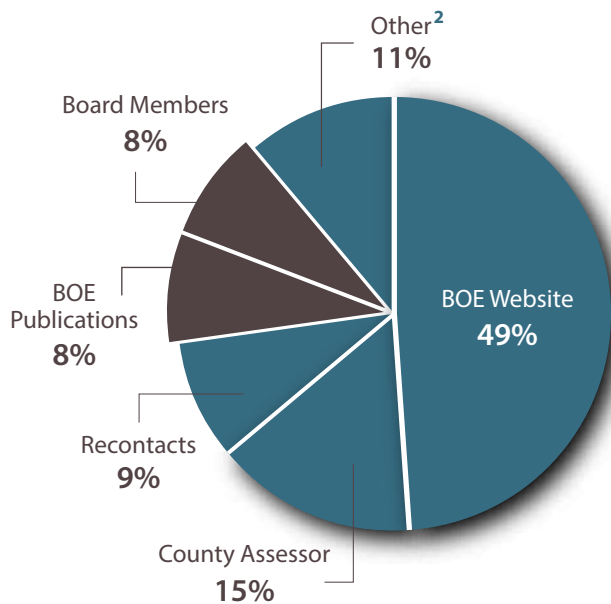
Specific property tax issues leading to TRA Office contacts

Each case may contain a variety of issues that prompted the taxpayer to contact the TRA Office. All issues in each case were tracked and the most common are displayed in [Appendix 3](#).

How taxpayers were referred to the TRA Office

In an effort to improve public service, the TRA Office attempts to identify the source of referrals. This year the Internet was the largest source of referrals, accounting for 49 percent of the property tax cases. County assessors accounted for 15 percent compared to last year's 24 percent.

Property Tax Caseload Referrals



Examples of Property Tax Cases

The following cases illustrate how taxpayers' issues are resolved by the TRA Office staff and indicate the range of services provided by the property tax technical advisors. Our role usually involves review and explanation of processes and methodology, and facilitation of resolutions between taxpayers and county departments.

Properties should have received parent-child exclusion

Issue. A taxpayer owned several properties in an area straddling a county line. All properties had the same city address even though the properties had different zip codes. When the taxpayer died in 2003, Parent to Child Exclusion forms were filed on all properties but sent to one county only. Years later, it was discovered that some properties did not receive the exclusion and thus had been reassessed as of the date of death.

Resolution. The TRA Office contacted the county where the exclusions were granted to determine if they had also received the application for parcels not in their county. After a long search, they were able to find the original application for all of the parcels and found that neither the adjacent county nor the taxpayer was notified that some of the parcels should have been handled by the adjacent county. Contact was then made with the adjacent county to determine whether they would now accept these applications as timely filed and thus grant the exclusion. Shortly after this was brought to the adjacent county's attention, the exclusions were granted. All parcels owned by the decedent had now received the exclusion as intended.

Summary—Services Provided. The TRA Office's efforts were effective because of the technical advisor's research skills and knowledge of county operations, and the TRA Office's working relationship with the counties.

Lender almost forecloses due to tax delinquency

Issue. A taxpayer purchased a duplex in 1971 for \$35,000. In 2006, his recently divorced wife transferred her half ownership to their daughter. The County Assessor did not recognize that the change occurred until 2010. At that point they issued an escape assessment for four years. The assessments caused the taxes to increase substantially and when the lender learned of the amount due, they demanded the owners pay the \$63,000 in taxes or they would start foreclosure proceedings. The owners remembered filling out an application for the parent child exclusion,

² The "Other" category consisted of referrals comprising two percent or less of the total, including county appeals boards, BOE staff, county tax collectors, and the State Controller's Office.

but the county was not able to locate it or the Preliminary Change in Ownership Report that was filed when the property transferred to the daughter in 2006. A Parent to Child Exclusion form was again filed but the county would only grant it prospectively and the escape assessments stood.

Resolution. An employee later found the misfiled exclusion application and Preliminary Change in Ownership Report, and the County realized it should have been processed when it was filed. The exclusion was granted and the escape assessments removed. The lender did not foreclose on the property.

Summary—Services Provided. The TRA Office kept focused on what happened to the previously filed documents and kept a dialogue open between the assessor and taxpayer that may have stalled without TRA Office involvement. The knowledge TRA Office staff have of the assessment process allows them to provide insight to both the taxpayer and assessor in resolving problems.

ISSUE RESOLUTION

The TRA Office strives to ensure fair and equitable treatment of taxpayers in the assessment and collection of taxes and to recommend changes in policies, procedures, and laws to improve the assessing, billing, refunding, and contesting of assessments. As a result of our contacts with taxpayers, issues raised at the annual Taxpayers' Bill of Rights hearings, and issues identified by TRA Office staff, recommendations are presented to BOE staff or counties for evaluation. The TRA Office then works with BOE and county staff in the development and implementation of changes that will improve the administration of property taxes.

Accomplishments—Changes Implemented, Concerns Resolved

The following improvements to services provided by BOE to counties and services provided by counties to taxpayers were accomplished this year.

Enhanced educational outreach to assessment appeal boards

Issue. The assessment appeal process is complex for all parties involved. Assessors, appeals boards and

their staff, and taxpayers need to understand the process as much as possible to ensure fair hearings. In 2010-11 the TRA Office became aware of the need for enhanced training for assessment appeals boards, and began working with the BOE's County-Assessed Properties Division on developing and delivering training.

Resolution. As recommended by the TRA Office in 2011-12, the County-Assessed Properties Division surveyed the county assessment appeal boards to learn the types of training and materials they needed. Based on the responses, this year the County-Assessed Properties Division prepared a resource guide to help assessors, assessment appeal boards, and the public locate valuable informational materials prepared by the BOE regarding the assessment appeal process. The TRA Office will continue to partner with the County-Assessed Properties Division to ensure that any newly identified needs for informational materials are addressed.

Access to information for assessment appeals must be provided timely

Issue. The law requires that assessors provide certain information about property assessments. This information should be both convenient to access by the public and also convenient for the county to provide. Information that was used to value a property, specifically market comparable sales, must be provided. When an appeal is involved, and a taxpayer or representative wants to see the data used in the appraisal in order to properly prepare for the assessment appeal hearing, they are allowed to do so. The time sensitive nature of the assessment appeal process requires that the information be provided timely after the request is made. The TRA Office was contacted by a tax professional who was frustrated about not being able to obtain from one county assessor's office the information his clients were entitled to in what he believed was a timely manner.

Resolution. The TRA Office stayed in communication with the tax professional and the county, seeking a mutually agreeable solution to the issue of ensuring taxpayers timely receive the information they need to prepare for their hearings. The assessor's office found a way to streamline their procedures so that access was

made easier for the public. There has been discussion about making the information available electronically, and the TRA Office will continue to monitor that aspect of this important taxpayers' rights issue.

TAXPAYER SERVICE IMPROVEMENTS BY COUNTIES

Beginning last year, the TRA Office began noting specific improvements counties have made in the services provided to the public. Each year we will monitor and report on improvements that either directly or indirectly enhance service to the public.

Sacramento County

The International Association of Assessing Officers recognized the Sacramento County Assessor's newly redesigned customer-oriented website with its 2013 Public Information Program Award. This award is presented to recognize an assessment jurisdiction's achievement in developing and implementing an effective system that provides information to taxpayers about the assessment process.

San Bernardino County

San Bernardino County has formatted all of their forms to allow them to be completed online; and added to their website their most recent annual report, historical roll data, and information about the Fire Prevention Fee.

Riverside County

The County of Riverside Assessor-Clerk-Recorder's Office redesigned its website with improved navigation and search functionality, providing easier access to news, forms, and services. With the development of a Property Sales Viewer that is now available on the website, the public no longer has to physically visit an office to view data from the prior 24 months. The office also initiated a social media presence on Facebook to reach taxpayers through additional channels about matters that may affect them. The office's Public Service Team's ability to generate print-outs for taxpayers of Proposition 8 (Decline in Value) reviews was improved with a new public service portal using a web browser, which is much more efficient to maintain and update than the prior method.

Ventura County

The Ventura County Assessor's Office added an online customer service evaluation survey, which provides the benefit of obtaining more rapid feedback from taxpayers, who expect government to respond quickly to their concerns and have the most up-to-date Internet tools available to them. The form allows respondents to rate various measures of customer service, indicate the reason for the visit, and provide comments. The respondent may also request to be contacted by the Assessor's Office.

BUSINESS TAXES ISSUES

CASE RESOLUTION

Approximately two-thirds of the Taxpayers' Rights Advocate (TRA) Office's contacts consist of individuals liable for taxes and fees under the Sales and Use Tax Law and various special tax and fee programs administered by the Board of Equalization (BOE). All of these tax and fee programs are collectively referred to as "business taxes."

A primary goal of the TRA Office is to ensure that taxpayers contacting the office with problems that have not been resolved through normal channels have their concerns promptly and fairly addressed. Because the Advocate and his staff have extensive knowledge of BOE programs, policies, and procedures, they are able to advise taxpayers of their rights and obligations, explain the tax law and BOE policy, and seek out creative and appropriate solutions that are acceptable to taxpayers and BOE staff. The TRA Office's independent status allows them to focus on assisting taxpayers within the framework of the law with the cooperation of BOE management and staff.

Following is information regarding the business taxes cases the TRA Office worked on this year and some examples of cases that illustrate the services the office offers its customers.

About the Business Taxes Case Statistics

During fiscal year 2012-13, the TRA Office recorded 646 new business taxes cases, compared to 642 cases in the previous fiscal year.

Outcome of business taxes cases

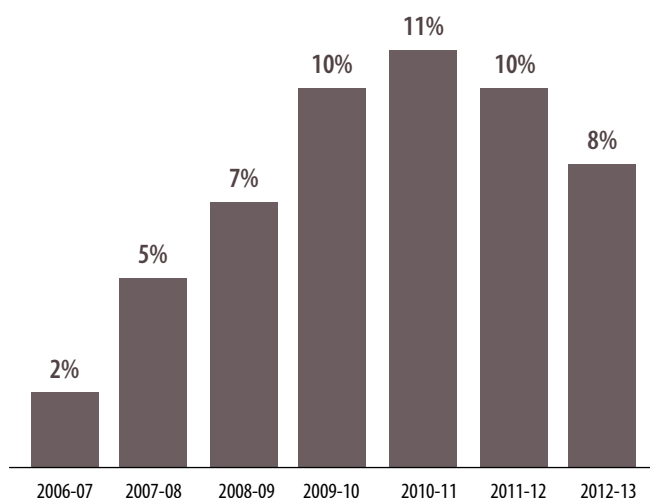
Appendix 4 provides important information about the cases, categorized by office of origin. A specific BOE field or Headquarters office or the Franchise Tax Board was designated as the office of origin for a case if the taxpayer contacted the TRA Office regarding an action taken by that specific office. "TRA Office" was normally designated as the office of origin in cases where individuals wanted general information and guidance regarding a BOE process or procedure or if the case was a result of testimony at a Taxpayers' Bill of Rights

hearing. The TRA Office tracked broad issue types (see below) and critical outcomes of the cases.

Customer Service Concerns. The TRA Office closely monitors the number and type of customer service concerns that taxpayers bring to its attention because the manner in which taxpayers are treated is an important indication of the extent to which BOE staff is acting in accordance with the intent of the Taxpayers' Bill of Rights. Customer service concerns are categorized as:

- *Communication:* providing misinformation, not acknowledging a taxpayer's concerns, not referring the taxpayer to a supervisor when requested, failing to answer specific taxpayer questions, or not providing information or a notice;
- *BOE Delay:* slow response to an inquiry, or delay in issuing a refund or resolving the taxpayer's case;
- *Staff Courtesy:* lack of courtesy or respect shown to taxpayer indicated by staff demeanor, manner of handling the taxpayer's case, or comments made by staff; and
- *Education:* lack of information provided regarding tax law, BOE policy, or BOE procedures; or staff training issues.

The number of customer service complaints decreased this year from ten to eight percent (see [Appendix 4](#)). The percentage of business taxes cases in recent years expressing concerns related to customer service is illustrated below.



Note: The customer service statistics were captured based solely on the taxpayers' statements or impressions of their situations. Therefore, these statistics do not necessarily indicate verified problems, but reflect the taxpayers' perception.

Agreed/Disagreed with Staff Case Handling. After investigating a taxpayer's concerns, the TRA Office is often able to confirm that staff's handling of the situation was consistent with legal, regulatory, and procedural mandates. Nevertheless, it is still possible that staff handling of the case could change. This may happen due to additional information coming to light through the TRA Office's investigation and communication with staff and the taxpayer; or as a result of the TRA Office's recommendation of a different approach to produce a result that is satisfactory to both the BOE and the taxpayer.

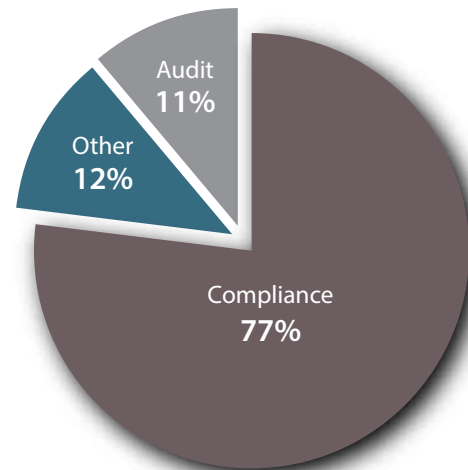
Occasionally, however, the TRA Office disagrees with one or more aspects of how BOE staff handled a case. These instances typically comprise a small percentage of the business taxes cases – only three percent in fiscal year 2012-13 (see [Appendix 4](#)). A case is recorded as "disagreed with staff handling" only when the TRA Office finds that:

- Staff did not adhere to the law or approved policies or procedures;
- Staff acted contrary to what the taxpayer was told by staff;
- Staff caused unreasonable delays; or
- Staff violated the taxpayer's rights.

In order to facilitate improved staff training, the Advocate provides a quarterly report to the appropriate department head and division manager containing the details of these cases, which provides management the opportunity to address specific training needs.

Taxpayer inquiries cover a wide range of issues

Types of Cases. Business taxes cases are sorted broadly into "compliance," "audit," or "other" categories. The "other" category represents consumer complaints, general information requests, and matters involving other state agencies.



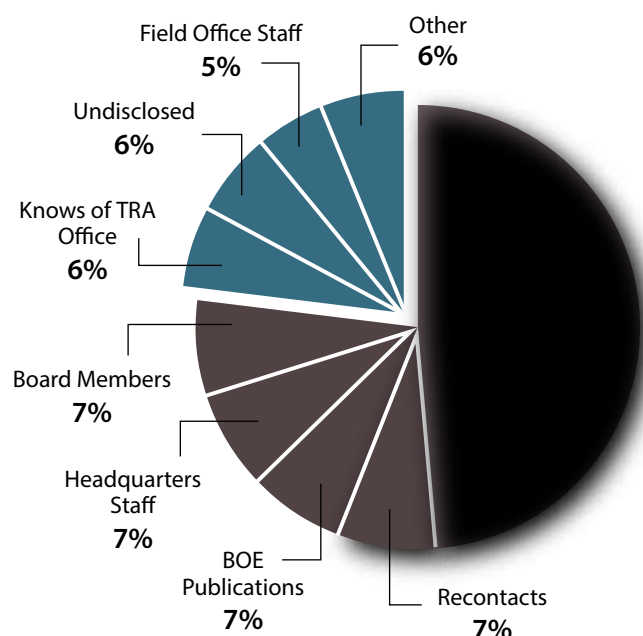
Specific Issues Leading to TRA Office Contacts. Each case may contain a variety of issues that prompted the taxpayer to contact the TRA Office. All issues in each case were tracked and the most common are displayed in [Appendix 5](#).

Not surprisingly, many of the business taxes cases include the need for general information and guidance. Taxpayers often seek information on a particular procedure or process or to determine if an action taken by BOE staff was appropriate and in compliance with the law and BOE policy.

How taxpayers were referred to the TRA Office

In an effort to improve public service, the TRA Office attempts to identify the source of referrals to its office. As in the past, this year the BOE website was the largest source of referrals, accounting for 49 percent of the business taxes cases.

Business Taxes Caseload Referrals



Examples of Business Taxes Cases

The following cases illustrate how taxpayers' issues are resolved by TRA Office staff with the cooperation of BOE staff, and indicate the range of services provided by the business taxes technical advisors. These two cases in particular demonstrate how TRA Office's ability to take a fresh look at a case and focus attention on all aspects of the situation benefits the taxpayer and the BOE.

Closing date of business was in dispute

Issue. An individual started a small business selling homemade pet food to friends and family. The product was not successful and he stopped selling after a short time, but was not aware that he needed to inform the BOE of the business closure. After failing to obtain responses to its inquiries, the BOE estimated amounts due for unfiled returns based on information on the seller's permit application, and billed the individual. The man was not successful in convincing collection staff that he made sales for only three months, and contacted the TRA Office, very upset because he lost his home to foreclosure, had filed bankruptcy, and was now receiving Notices of Levy from the BOE.

Resolution. The TRA Office explained to the individual that the estimated billings normally would only be

adjusted if he filed returns for the missing periods and provided proof that he had made no sales. When the taxpayer said he did not know how to prove he had made no sales, the TRA Office began reviewing the account. It was found that two years after the date of the claimed business closure the individual had sent a notice of close-out to the BOE, verbally informed staff, and filed a final sale tax return.

In discussions with collection staff, it was acknowledged that minimal effort had been expended to verify business activity (one phone call was made with a message left) or to determine estimated sales amounts. There was no income tax return filed for the periods in question, but staff was willing to look at bank statements and consider the taxpayer's explanations for account activity.

The TRA Office searched for evidence of business activity after the individual claimed the business was closed and found no indication of such activity through an Internet search and in the individual's bankruptcy records. The individual's explanations about bank account activity were credible.

On the strength of the TRA Office's investigation collection staff changed the close-out date to reflect one quarter only of operation, accepted the late filed return, adjusted the billings, and recommended the taxpayer's claim for refund of levied funds be approved.

Summary—Services Provided. The individual was frustrated and did not know how to convince collection staff that he had only operated his business for three months. Collection staff had made only minimal effort to investigate the extent of the business operations. The TRA Office was able to take the time to learn the individual's story and to do independent research, which led to a favorable outcome for the individual and the elimination of a collection account for the BOE.

Collection cost recovery fee should not have been assessed

Background. Statutes enacted in 2010 required the BOE to begin imposing a collection cost recovery fee (CRF) on past due liabilities effective January 1, 2011. The statutes also required that demand notices

issued on or after January 1, 2011, inform taxpayers that continued failure to pay a past due liability may result in collection action being taken, including the assessment of a CRF. Taxpayers were informed they may avoid the CRF by either paying their liability in full or by entering into an installment payment agreement (IPA) prior to the CRF being assessed.

Issue. A married couple contacted the TRA Office requesting assistance with obtaining relief from CRFs. Both individuals had been held personally responsible for the unpaid debts of their terminated business, and had been making payments for a number of years on the liability.

The couple believed the CRF should not have been assessed because they had a payment plan and never missed a payment. BOE collectors had told them the fee was properly assessed because there was an unpaid liability after January 1, 2011, and there was no formal payment agreement.

Resolution. The TRA Office found that BOE collection staff discussed the liability with the taxpayers shortly before the new CRF became effective, but failed to advise the taxpayers about the pending fee or advise them to enter into a formal payment agreement to avoid the assessment of the fee. When the couple received notices informing them about the new fee, they believed they would not be assessed because their payment agreement exempted them.

The TRA Office also noted that the couple had a reasonable belief that they had a formal payment agreement, since their proposed agreement had not been denied and they had timely made every payment. In such a case, BOE policy requires collection staff to send a BOE-407-T, *Installment Payment Agreement—Termination Notice*, which serves to inform the taxpayer that they do not have a formal payment agreement and that collection actions may be taken at any time. This had not been done.

The collection manager agreed that, based on the taxpayers making continued payments, with lack of any contact from BOE indicating the payments were not acceptable, nor a BOE-407-T being sent, it would appear the taxpayers were on a payment plan. The CRF was relieved on the two related accounts.

Summary—Services Provided. TRA Office staff's willingness to look at the situation from the taxpayers' point of view, coupled with a depth of knowledge of BOE policies, enabled them to effectively make the case to collection staff that the CRF should be reversed.

ISSUE RESOLUTION

The two primary functions of the TRA Office are to ensure fair and equitable treatment of taxpayers in the assessment and collection of taxes and to recommend changes in policies, procedures, and laws to improve and ease taxpayer compliance. As a result of specific contacts from taxpayers, issues raised at the annual Taxpayers' Bill of Rights hearings, suggestions received from BOE staff, and issues identified by TRA Office staff, recommendations are presented to BOE management for evaluation. The TRA Office then works with BOE staff in the development and implementation of policy, procedure, or law changes to address any identified areas of concern.

Accomplishments—Changes Implemented, Concerns Resolved

The following changes to business taxes laws, policies and procedures; or improvements to the training and education provided to BOE staff and the public were accomplished this past year.

Special Taxes sections of the Revenue and Taxation Code (R&TC), Claim for Reimbursement of Bank Charges, were amended to allow reimbursement of fees caused by erroneous processing or collection action; trigger for deadline to file claim was adjusted

Issue. The BOE, as part of its administrative duties with respect to the collection of taxes, is authorized to seize property of a delinquent taxpayer, and may issue a levy or order to financial institutions to withhold and remit credits or personal property of a delinquent taxpayer in order to satisfy the tax obligations of the taxpayer. However, under R&TC section 7096 (Sales and Use Tax Law) and various special taxes statutes, if the BOE erroneously issues a levy or notice to withhold, and that error resulted in bank charges or third party check charges incurred by the

taxpayer, the taxpayer may file a claim with the BOE for reimbursement of those charges. The TRA Office is charged with the responsibility of reviewing and approving these reimbursement claims.

Occasionally, an erroneous BOE action other than a levy or notice to withhold results in the imposition of bank or third party check charges. For example, a taxpayer's bank account may be charged incorrectly for an automatic payment made in connection with an installment payment agreement, causing an overdraft condition in the bank account. Although the BOE is able to reverse the erroneous debit, the law contained no express statutory authority to reimburse the taxpayer for any bank-imposed fees or third party check charges the taxpayer may have incurred due to the error.

The TRA Office suggested a legislative change, signed into law in 2011, that amended R&TC section 7096 to allow sales and use taxpayers to claim reimbursement for bank and third party check charges due to an erroneous processing action or erroneous collection action by the BOE on sales or use tax matters. The change that the TRA Office proposed was consistent with the original intent of section 7096, as well as with provisions in R&TC section 21018, administered by the Franchise Tax Board.

The TRA Office suggested follow-up legislation in 2012 and 2013 to amend all equivalent special taxes laws administered by the BOE to ensure that all taxpayers served by the BOE have the same right to claim reimbursement of bank charges caused, not only by erroneous BOE levies, but also by erroneous BOE processing or collection action. These law changes were made in 2013.³

In 2012 and 2013 the TRA Office suggested an amendment to all bank fee reimbursement statutes to add the following sentence, in reference to the 90-day filing deadline: "This provision may be waived by the board for reasonable cause." The purpose of the suggested amendment was to allow the BOE to consider making an exception to the 90-day requirement in circumstances where the taxpayer

missed the deadline for filing a claim through no fault of the taxpayer's. Although this suggested language was not incorporated into amendments, a more limited change was made to all statutes in 2013 to address the matter of the 90-day deadline concern.

Change implemented. Law changes were approved in 2013. As provided by Senate Bill 442 (Stats. 2013, Ch. 253), effective January 1, 2014:

- All special taxes statutes equivalent to R&TC section 7096 contain added language regarding "erroneous processing or collection action"; and
- R&TC section 7096 and the equivalent special taxes statutes have a new provision that changes the trigger of the 90-day deadline for filing a reimbursement claim **from** the date of the erroneous BOE action **to** the date the taxpayer incurred the bank and/or third-party check charges. This provision is intended to ensure the taxpayer does not miss the deadline to file a claim if the bank's actions in response to the levy or other BOE action are delayed.

Sales and Use Tax Department reaffirmed process for considering reinstatement of revoked accounts with an installment payment agreement

Issue. Compliance Policy and Procedures Manual (CPPM) 751.090, *Conditions of Reinstatement*, provides in part that, in order for BOE to reinstate a revoked account, the taxpayer must clear the cause for revocation by:

1. Filing all delinquent returns and paying the taxes/fees, penalty and interest due.
2. Paying all self-assessed delinquent balances due according to the records of the BOE.
3. Paying, or entering into an installment payment agreement, for audit-determined liabilities.
4. Posting required or additional security on sales tax accounts. Arrangements to post the security deposit in installments may be accepted in lieu of requiring full payment of the security, at the district's discretion.

³ Special taxes statutes equivalent to R&TC section 7096 include: R&TC sections 9274, 30459.4, 32474, 40214, 41174, 43525, 45870, 46625, 50156.14, 55335, and 60633.1.

5. Paying the applicable amount of the reinstatement fee (currently fifty dollars per active location [increased to \$100 effective January 1, 2010]) and completing all required forms.
6. Clearing any other causes for revocation of the permit or license.

In general, the TRA Office agrees with the policy of requiring the taxpayer to pay all self-assessed delinquent balances in full before allowing reinstatement, while allowing reinstatement before payment in full in the case of audit-determined liabilities. However, the TRA Office became aware of cases where collection staff have acted upon the recognition that the interests of the state are best served by reinstatement of the permit prior to payment in full of self-assessed liabilities, with the approval of an installment payment agreement.

The TRA Office suggested that the BOE consider revising policy to allow District Administrators the discretion to approve acceptance of a taxpayer's payment proposal for self-assessed liabilities as a condition of reinstating a revoked account.

Resolution. The Sales and Use Tax Department (SUTD) studied this suggestion, and after analyzing the pros and cons, declined to revise policy as the TRA Office suggested, stating that taxpayers are provided many opportunities to comply prior to revocation. It was explained that exceptions to policy are reviewed on a case-by-case basis, and any staff recommendation to reinstate an account with an installment payment agreement is reviewed by the Chief of Field Operations and forwarded to the Deputy Director for decision. The TRA Office appreciated the SUTD's consideration of this proposal and agreed that the current policy is reasonable. However, it may be necessary to revisit this issue if significant statewide inconsistencies in practice are noted.

BOE-wide access to signed BOE-82 (Authorization for Electronic Transmission of Data) and BOE-392 (Power of Attorney) was made available

Issue. The TRA Office periodically hears concerns voiced by taxpayers or their representatives that they are required to provide multiple copies of

authorization forms BOE-82, *Authorization for Electronic Transmission of Data*, or BOE-392, *Power of Attorney*, to different units within the BOE. The TRA Office suggested to the Tax Policy Division that a taxpayer should be able to provide a BOE-82 or BOE-392 to BOE once and have the authorization be available to any BOE staff that has a business reason to review it.

Resolution. This issue was addressed through various BOE initiatives to implement organized e-document storage. The Central Files Unit can now provide electronic documents from taxpayer files such as the BOE-82 and BOE-392 on demand, and designated BOE staff can import scanned documents into taxpayer files on an ongoing basis.

Guidelines were provided on when to attach a spousal affidavit to a notice of levy

Issue. The BOE is authorized to serve a notice of levy on a third party holding property belonging to a tax debtor. Funds held in a joint bank account are presumed to be community property (Probate Code 5305(a)) and to reach community property interests staff must attach a spousal affidavit to the notice of levy. The TRA Office saw a number of cases in which the bank accounts of non-liax ex-spouses or non-spouses of delinquent taxpayers were levied, causing them hardship. Often, the non-liax party only became aware of the levy as a result of a notice from the bank or when there are insufficient funds for checks.

There were two areas of concern:

1. There appeared to be no consistency among BOE staff about when to include the spouse on a levy. When a levy references the spouse, the levying officer must include an affidavit (BOE-425-L4) which certifies that they have knowledge that the person named is the judgment debtor's spouse. However, there were no guidelines on what constitutes proof of marriage.
2. A copy of the Notice of Levy, along with a BOE-425-L3, *Notice of Levy—Information Sheet*, was only sent to the taxpayer's address of record, addressed to the taxpayer only. Therefore, even though the non-liax spouse (or as it sometimes

happened, the ex-spouse or non-spouse) was personally affected by the levy, this person received no notice and received none of the information on the BOE-425-L3 about filing a third-party claim. Code of Civil Procedure section 700.140(b) requires that such a notice be provided to any third party.

The TRA Office recommended developing clear guidelines on when to include spouses on a levy. Staff signing an affidavit should have, by a preponderance of evidence, verified marital status. In addition, once the spouse is included on the notice of levy, the BOE should be required to notify the spouse of the impending action that could have a profound effect on him/her personally and provide the information sheet containing instructions for a person other than the judgment debtor. The TRA Office suggested that this notification be mailed on the same day that the taxpayer's copy of the notice of levy and related information is mailed.

Resolution. The Sales and Use Tax Department issued guidance to staff on April 17, 2013 on including a spouse on a notice of levy. Staff was advised that, before signing the spousal affidavit, which acknowledges that the non-debtor spouse is subject to the levy as that of community property, staff must perform a thorough investigation to determine whether the funds are community property, and must document their findings. Examples of sources of information available to staff were provided. In addition, staff was reminded that, along with a copy of the notice of levy, the spouse must receive copies of the BOE-425, *Exemptions from Enforcement of Judgments*, and BOE-425-L3, *Notice of Levy Information*.

Guidelines were issued on when to place an offset against a non-liable spouse

Issue. CPPM 771.000, *Interagency Offsets*, provides guidance on requesting payment from another state agency that owes money to a person or entity when that person or entity owes a liability to the BOE, known as "offsetting." The TRA Office became aware of a number of cases in which a spousal offset was placed on a non-liable spouse without community property considerations.

The CPPM addresses this matter in 771.020, which states in part:

"Accounts selected for offset must meet the following conditions: . . .

"8. The refund is community property or sole property of the individual. (Staff should look for the dissolution of a marriage or that the couple is not living apart. If the couple is living apart, the income of each spouse is separate property.)"

The TRA Office was concerned that staff was routinely placing offsets on spouses' income tax refunds without attempting to confirm that the refund is community property. The Tax Policy Division agreed that offsets should only be placed on spouses that file separately and then only when it can be established that the offset funds are community property.

Resolution. In an April 23, 2013 memorandum, staff was reminded that the BOE has the responsibility of establishing proof of current marriage and that community property rights exist before placing an FTB offset on a non-liable spouse income tax return. Staff was advised that, with supervisory approval, offsets will only be placed on non-liable spouses that file income tax returns separately, and when it is established that the refund is community property. Examples of evidence that can be used (and must be documented) to determine marital status and community property were provided. In addition, because an offset request remains in place until an action is taken to remove it, collectors were advised that they will need to confirm current marriage and community property for a non-liable spouse each year.

Publication summarizing collection procedures and rights was developed for mailing with collection notices

Background. Publication 54, *Tax Collection Procedures*, was developed by the Taxpayers' Rights Advocate Office and the Sales and Use Tax Department a number of years ago to provide information to taxpayers with unpaid tax liabilities about the methods available to the BOE to enforce collection, payment options, their rights during the collection

process, and the refund process. Publication 54, an eight-page document, was routinely enclosed with collection notices until 2009. At that time, as part of a cost-cutting measure to eliminate printing and mailing costs of BOE publications, the mailing of hard copies of publication 54 was eliminated and information was added to the text of various collection notices referring taxpayers to BOE's website to review publication 54.

Issue. At a June 2012 meeting of the BOE's Customer Services and Administrative Efficiency Committee, Board Members expressed concerns regarding the distribution of publication 54, stating that the earlier this publication is presented to taxpayers, the more likely they will be to voluntarily comply. As requested by the Members, more detailed information about the collection process and copies of the collection notices were provided by the Sales and Use Tax Department in October 2012.

At issue was the need to ensure that taxpayers receive relevant and timely information about the possible consequences of unpaid tax liabilities and about their rights during the collection process in the most efficient manner.

Resolution. The TRA Office compared collection notification processes with the other California Taxpayer Advocates and found that the IRS and the FTB routinely enclose a two-page publication with all collection notices informing taxpayers of their rights and collection actions that can be taken. Using those examples as a starting point, the TRA Office drafted for the Sales and Use Tax Department's consideration a streamlined version of publication 54 to be used as an insert with collection notices. The proposed one-page double-sided publication was intended to provide taxpayers with vital information to help them understand:

- Their rights during the collection of taxes;
- How to pay what they owe;
- What they need to do if they do not think they owe the tax;
- What methods the BOE is authorized to use to collect the unpaid balance from them; and
- How to get more information.

The TRA Office worked with the Sales and Use Tax Department to develop new [publication 54A, *Behind on Your Payment? What You Need to Know*](#) (August 2013). This new publication is now routinely used as an insert with the collection notices that formerly referenced the availability of publication 54 on the website.

Statewide Compliance and Outreach Program Guidelines were published on the BOE website

Issue. In an effort to improve public access to audit and compliance policies and procedures, the entire Audit Manual and Compliance Policy and Procedures Manual are available to taxpayers and stakeholders on the BOE website. In addition, the Investigations Division's Policy and Procedures Manual is available on the Investigations Division's web-page. This allows BOE taxpayers to obtain a clear understanding of what to expect during the registration, audit, and collection processes. Publication of these manuals is consistent with the BOE's ongoing efforts to be a more transparent agency by using a variety of means to make information more easily accessible to the public and its employees.

The purpose of the Sales and Use Tax Department's Statewide Compliance and Outreach Program (SCOP) is to educate business owners regarding their sales and use tax reporting responsibilities, ensure businesses have the required state tax and fee permits, provide a field presence for the BOE, and address the tax gap that exists between sales and use tax revenue due under existing laws and the actual amount that is reported and paid. The TRA Office was aware that written guidelines were available for SCOP staff, and asked the Sales and Use Tax Department to consider making these available to the public, consistent with BOE's other procedural materials.

Resolution. Sales and Use Tax Department management agreed with the TRA Office's suggestion to publish procedures for the SCOP on the BOE's website. In August 2012, the Sales and Use Tax Department placed a draft of the non-confidential information on the BOE website as proposed CPPM Chapter 10, *Statewide Compliance and Outreach Program*, seeking public comment prior to Board

approval. The chapter was revised based on comments received, and Board approval is anticipated by late 2013.⁴

Taxpayers may now initiate installment payment agreement requests online

Issue. The BOE has discretion under the law to allow an installment payment agreement (IPA) in cases of financial hardship, thereby accommodating a taxpayer's economic realities while allowing the taxpayer to meet its obligation to the state. Under certain circumstances, a streamlined installment payment agreement (SIPA) may be offered to a taxpayer with a final liability up to \$10,000, if specific criteria are met. Under a SIPA, the taxpayer is not required to provide any financial documentation.

Some taxpayers suggested to the TRA Office that BOE consider allowing taxpayers to go online and request their own payment arrangement and not have to be burdened by submitting financial information when tax liabilities are small. In researching this suggestion, we noted that the FTB has a policy of allowing individuals to request an IPA online, by mail, or by phone under certain circumstances.

In 2009, the BOE began working on requirements to implement online IPA requests as part of its eServices Expansion Project. However, the Online IPA project was eliminated in June 2010 when electronic services projects were significantly impacted by BOE's mandate to implement various major pieces of new legislation.

The Advocate suggested the BOE consider reviving and completing the Online IPA project, pointing out that it appeared likely that giving taxpayers the ability to propose an IPA online with automatic acceptance if predetermined criteria were met, could greatly reduce collection staff workload. In addition, this system could provide more consistent treatment of taxpayers statewide, and is consistent with BOE's vision, as described in its strategic technology plan, *The 2020 Plan*, of allowing taxpayers to be able to retrieve and enter their information easily, how they want it and when they want it, thereby better positioning BOE to

maximize voluntary compliance with the tax and fee programs it administers.

Change implemented. The project was returned to the Technology Services Department's work plans and completion is expected by December 2013. In anticipation of implementation of the Online Payment Plan program, the Sales and Use Tax Department is drafting changes to a number of BOE publications and notices and preparing guidance for staff.⁵

Work in Process—Issues Identified

As a result of taxpayer contacts and review of trends, policies, and procedures within the BOE, the TRA Office has recommended consideration of the following issues and is working with staff to develop solutions.

Notice of Proposed Determination letters should be issued for dual determinations other than R&TC section 6829

Issue. In fiscal year 2010-11, the Sales and Use Tax Department developed a standard report (letter) to be routinely provided to individuals proposed to be held personally liable for a business' tax debt under R&TC section 6829. The letter explains the basis of the proposed billing and how requirements for personal responsibility are deemed met. The BOE-1515, *Notice of Proposed Determination*, is sent to the proposed responsible person(s) 15 days prior to final review and billing. The BOE-1515 outlines the basis for holding the person personally liable under R&TC section 6829, explains their appeal rights, advises them to respond within 15 days if they disagree, and explains that they may obtain copies of documentation relied on by staff to determine the person's liability.

This procedure is working well and is providing taxpayers an opportunity to resolve their liability at an early stage, in some cases without the need to go through a lengthy petition process. The TRA Office believes that all taxpayers being held liable for the debt of another entity should be afforded the same due process and, accordingly, proposed that the Sales and Use Tax Department mirror the process of issuing Notice of Proposed Determination letters to responsible persons under R&TC section

⁴ The Board approved publication of new CPPM Chapter 10 on November 20, 2013.

⁵ Qualifying taxpayers were allowed to request a payment plan online starting December 19, 2013.

6829 for all other types of dual determinations, such as successors, predecessors, and questionable ownership.

Work in Process. The Sales and Use Tax Department agreed with the TRA Office's proposal and prepared to draft policy for issuing Notices of Proposed Determination for all other duals and to develop appropriate versions of the BOE-1515 letter for other proposed dual determinations. The TRA Office participated in a preliminary clearance of the letter drafts. When fundamental questions arose among clearance reviewers about the composition and use of the letters, the TRA Office met with representatives of the areas of the Sales and Use Tax Department and Legal Department responsible for preparing, reviewing, approving, and billing various types of dual determinations to learn of their concerns. The TRA Office intends to continue working with affected BOE units to resolve procedural complications related to this proposal and draft proposed letters consistent with revisions currently under consideration by SUTD for the BOE-1515.

A BOE form and filing instructions should be developed for third party claims

Background. A third party may claim ownership or the right to possession of property subject to a Notice of Levy pursuant to Code of Civil Procedure (CCP) section 688.030. CPPM 753.210, *Third Party Claims*, provides general information and guidance on processing third-party claims. A third-party claimant should file its claim with the BOE office that issued the levy and the BOE office issuing the levy is responsible for advising the claimant of all the requirements for a valid claim and determining whether the third-party claim conforms to the requirements of CCP section 720.130.

CCP sections 720.110 and 720.120 require that a third-party claim be made by the person claiming ownership and that the claim be submitted prior to the BOE receiving the levied funds. If a claim is received after the BOE has deposited the funds, the only recourse available to the claimant is to follow the claim for refund process. All conforming third-party claims are to be immediately referred to the Litigation Division of the Legal Department, where a

determination will be made whether to release the levy or refer the matter to the Attorney General.

Current policy requires BOE collectors to send a copy of the Notice of Levy to the taxpayer within 10 calendar days after service of the levy, along with a BOE-425, *Exemptions from the Enforcement of Judgments*, and a BOE-425-L3, *Notice of Levy—Information Sheet*. The information sheet contains a section on "Information for Person Other Than Judgment Debtor" that provides in part:

"If you claim ownership or the right to possession of real or personal property levied upon or if you claim a security interest in or lien on personal property levied upon, you may make a third-party claim and obtain the release of the property pursuant to CCP 720.010-720.800."

Issue. The TRA Office has received a number of contacts from non-liaise third parties whose bank accounts or investment accounts were impacted by BOE levies. We are frequently told that when the individual called the BOE collector to explain why their account should not have been levied, the collector failed to explain the process for filing a third-party claim or to inform the individual that, to preserve their rights without having to resort to a claim for refund, the third-party claim must be received before the BOE deposits the funds captured by the levy.

The TRA Office believes it would be beneficial to BOE staff and to third-party claimants to develop a BOE form for use in filing a written third-party claim. Typically, the third party would not receive the *Notice of Levy—Information Sheet* that is sent to the taxpayer with the copy of the Notice of Levy, and even if they did, there is no information on it about how to file a claim with the BOE and no notice that the claim must be received by the BOE prior to the BOE depositing the funds. If a standard third-party claim form were available, with general information and instructions on the back, any BOE employee contacted by a potential claimant could immediately provide the form to the individual.

Work in process. The TRA Office is working with the Legal Department on a draft of a new claim form that can be used for either a claim of exemption to levy or a third-party claim.

TAX APPEALS ASSISTANCE PROGRAM

ABOUT THE PROGRAM

The Board of Equalization (BOE) serves as the administrative appellate body for the tax and fee programs it administers. Its appellate duties also include review of final actions of the Franchise Tax Board involving the state's Franchise and Personal Income Tax Laws.

The Taxpayers' Rights Advocate created the Tax Appeals Assistance Program in fiscal year 2005-06 to allow low-income and underrepresented taxpayers who have filed an appeal the opportunity to seek free legal assistance, which is provided by law students. Five law schools participate in the program: the University of the Pacific McGeorge School of Law in Sacramento, the Loyola Law School Los Angeles, the Chapman University School of Law in Orange, the Golden Gate University School of Law in San Francisco, and the University of San Diego School of Law in San Diego. All interactions with participating law schools are overseen by the Taxpayer's Rights Advocate (TRA) Office, which also provides instructors for the students.

Franchise and Personal Income Tax Appeals

The program is offered to appellants who are appealing decisions of the Franchise Tax Board with less than \$20,000 in dispute, if the dispute relates to one of the following issues:

- Penalties;
- Head of household;
- Residency;
- Innocent spouse;
- Interest abatement;
- "California Method" (R&TC section 17041, subdivision (b));
- Federal action (notice of proposed assessment based on an action by the Internal Revenue Service);
- Statute of limitations (assessments or refunds);

- Child and dependent care credits;
- Exemption credits;
- Other state tax credits;
- Personal income tax deductions; and
- Corporate minimum tax.

Business Taxes Appeals

The Tax Appeals Assistance Program is available to assist individuals with appeals related to the following business taxes areas administered by the BOE:

- Consumer use tax billings under \$20,000; and
- Cigarette and Tobacco Products Licensing Act violations.

The Tax Appeals Assistance Program has been well received by all five law schools and the program's clients. The TRA Office will continue to work with the Appeals Division, the Sales and Use Tax Department, and the Property and Special Taxes Department to develop guidelines and parameters for adding additional business taxes appeals to the program.

CASE RESOLUTION

Since its inception, the program has grown from one law school with a few students instructed by one BOE tax counsel, to five law schools with over 60 students instructed by two BOE tax counsels.

During fiscal year 2012-13, 872 individuals were informed that they may qualify for the program, 284 cases were accepted into the program, and 234 cases were resolved with the assistance of the program.

The Tax Appeals Assistance Program makes a positive difference in the lives of its clients. This year's completed cases have fulfilled the purposes of the program, which are to:

- Educate and assist taxpayers in voluntarily complying with California's tax laws while minimizing their tax compliance burden, and
- Enhance the preparation and quality of the appeals that come before the Board Members.

APPENDIX 1

THE HARRIS-KATZ CALIFORNIA TAXPAYERS' BILL OF RIGHTS

(Revenue and Taxation Code Sections)

7080. Title. This article shall be known and may be cited as "The Harris-Katz California Taxpayers' Bill of Rights."

7081. Legislature's findings and declarations. The Legislature finds and declares that taxes are the most sensitive point of contact between citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression. It is the intent of the Legislature to place guarantees in California law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes.

The Legislature further finds that the California tax system is based largely on voluntary compliance, and the development of understandable tax laws and taxpayers informed of those laws will improve both voluntary compliance and the relationship between taxpayers and government. It is the further intent of the Legislature to promote improved voluntary taxpayer compliance by improving the clarity of tax laws and efforts to inform the public of the proper application of those laws.

The Legislature further finds and declares that the purpose of any tax proceeding between the State Board of Equalization and a taxpayer is the determination of the taxpayer's correct amount of tax liability. It is the intent of the Legislature that, in furtherance of this purpose, the State Board of Equalization may inquire into, and shall allow the taxpayer every opportunity to present, all relevant information pertaining to the taxpayer's liability.

7082. Administration. The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

7083. Taxpayers' Rights Advocate. (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest which would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

7084. Education and information program. (a) The board shall develop and implement a taxpayer education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Taxpayer or industry groups identified in the annual report described in Section 7085.
- (3) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) Mailings to, or appropriate and effective contact with, the taxpayer groups specified in subdivision (a) which explain in simplified terms the most common areas of noncompliance the taxpayers or industry groups are likely to encounter.

(2) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities as a holder of a seller's permit or use tax registrant and the most common areas of noncompliance encountered by participants in their business or industry.

(3) Participation in small business seminars and similar programs organized by federal, state, and local agencies.

(4) Revision of taxpayer educational materials currently produced by the board which explain the most common areas of taxpayer nonconformance in simplified terms.

(5) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

7085. Identification of taxpayer noncompliance by board. (a) The board shall perform annually a systematic identification of areas of recurrent taxpayer noncompliance and shall report its findings in its annual report submitted pursuant to Section 15616 of the Government Code.

(b) As part of the identification process described in subdivision (a), the board shall do both of the following:

(1) Compile and analyze sample data from its audit process, including, but not limited to, all of the following:

(A) The statute or regulation violated by the taxpayer.

(B) The amount of tax involved.

(C) The industry or business engaged in by the taxpayer.

(D) The number of years covered in the audit period.

(E) Whether or not professional tax preparation assistance was utilized by the taxpayer.

(F) Whether sales and use tax returns were filed by the taxpayer.

(2) Conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Sales and Use Tax Law which may further facilitate achievement of the legislative findings.

(c) The board shall include in its report recommendations for improving taxpayer compliance and uniform administration, including, but not limited to, all of the following:

(1) Changes in statute or board regulations.

(2) Improvement of training of board personnel.

(3) Improvement of taxpayer communication and education.

7086. Preparation of statements by board. The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional

taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include the statement in the annual tax information bulletins which are mailed to taxpayers.

7087. Limit on revenue collected or assessed. (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

- (1) To evaluate individual officers or employees.
- (2) To impose or suggest revenue quotas or goals, other than quotas or goals with respect to accounts receivable.
- (b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).
- (c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

7088. Evaluation of employee's contact with taxpayers. (a) The board shall develop and implement a program which will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

(b) The board shall report to the Legislature on the implementation of this program in its annual report.

7089. Plan to timely resolve claims and petitions. No later than July 1, 1989, the board shall, in cooperation with the State Bar of California, the California Society of Certified Public Accountants, the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard time frames and special review of cases which take more time than the appropriate standard time frame.

7090. Procedures relating to protest hearings. Procedures of the board, relating to protest hearings before board hearing officers, shall include all of the following:

- (a) Any hearing shall be held at a reasonable time at a board office which is convenient to the taxpayer.
- (b) The hearing may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.
- (c) The taxpayer shall be informed prior to any hearing that he or she has a right to have present at the hearing his or her attorney, accountant, or other designated agent.

7091. Reimbursement to taxpayer. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

- (1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.
- (2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.
- (3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to this section shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 1999.

7092. Investigations for nontax administration purposes. (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include sales and use tax violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

7093.5. Settlement authority. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise in writing the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The

executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax or penalties or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

- (1) The name or names of the taxpayers who are parties to the settlement.
- (2) The total amount in dispute.
- (3) The amount agreed to pursuant to the settlement.
- (4) A summary of the reasons why the settlement is in the best interests of the State of California.
- (5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 7056.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

7093.6 Offers in compromise. (a) (1) Beginning January 1, 2003, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). A recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), and Part 1.7 (commencing with Section 7280) or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) Notwithstanding paragraph (1), a qualified final tax liability may be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final tax liability shall also apply to a qualified final tax liability, and a compromise shall not be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a "qualified final tax liability" means any of the following: (A) That part of a final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the taxpayer collected sales tax reimbursement or use tax from the purchaser or other person and which was determined against the taxpayer under Article 2 (commencing with Section 6481), Article 3 (commencing with Section 6511), and Article 5 (commencing with Section 6561) of Chapter 5.

(B) A final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising under Article 7 (commencing with Section 6811) of Chapter 6.

(C) That part of a final tax liability for use tax, including related interest, additions to tax, penalties, or other amounts assessed under this part, determined under Article 2 (commencing with Section 6481), Article 3 (commencing with Section 6511), and Article 5 (commencing with Section 6561) of Chapter 5, against a taxpayer who is a consumer that is not required to hold a permit under Section 6066.

(3) A qualified final tax liability may not be compromised with any of the following:

(A) A taxpayer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the taxpayer is making the offer.

(B) A business that was transferred by a taxpayer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(C) A business in which a taxpayer who previously received a compromise under paragraph (2) has a controlling interest or association with a similar type of business for which the taxpayer received the compromise, when the liability of the business making the offer arose from a transaction or transactions substantially similar to the transaction or transactions for which the taxpayer's liability was previously compromised.

(d) The board may, in its discretion, enter into a written agreement that permits the taxpayer to pay the compromise in installments for a period not exceeding one year. The agreement may provide that the installments shall be paid by electronic funds transfers or any other means to facilitate the payment of each installment.

(e) Except for any recommendation for approval as specified in subdivision (a), the members of the State Board of Equalization shall not participate in any offer in compromise matters pursuant to this section.

(f) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) may be required to enter into any collateral agreement that is deemed necessary for the protection of the interests of the state. A collateral agreement may include a provision that allows the board to reestablish the liability, or any portion thereof, if the taxpayer has sufficient annual income during the succeeding five-year period. The board shall establish criteria for determining "sufficient annual income" for purposes of this subdivision.

(g) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required sales and use tax returns for a five-year period from the date the liability is compromised, or until the taxpayer is no longer required to file sales and use tax returns, whichever period is earlier.

(h) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(i) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(j) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(k) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(l) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for a least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

- (1) The name of the taxpayer.
- (2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 7056. A list shall not be prepared and releases shall not be distributed by the board in connection with these statements.

(m) A compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that a person did any of the following acts regarding the making of the offer:

(A) Concealed from the board property belonging to the estate of a taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified a book, document, or record or made a false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(n) A person who, in connection with an offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

(1) Conceals from an officer or employee of this state property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies a book, document, or record, or makes a false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(o) For purposes of this section, "person" means the taxpayer, a member of the taxpayer's family, a corporation, agent, fiduciary, or representative of, or another individual or entity acting on behalf of, the taxpayer, or another corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(p) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

7094. Release of levy. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to one thousand five hundred dollars (\$1,500) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

7094.1. Return of property. (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 6832 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 7096.

7095. Exemptions from levy. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

7096. Claim for reimbursement of bank charges by taxpayer. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with

the board that shall be in the form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold, erroneous processing action, or erroneous collection action was caused by board error.

(2) Prior to the levy or notice to withhold, erroneous processing action, or erroneous collection action, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold, erroneous processing action, or erroneous collection action. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

7097. Preliminary notice to taxpayers prior to lien. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 6536) of Chapter 5.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and the receipt of lien recording information. The release shall contain a statement that the lien was filed in error.

In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

7098. Notice preliminary to suspension. For the purposes of this part only, the board shall not revoke or suspend a person's permit pursuant to Section 6070 or 6072 unless the board has mailed a notice preliminary to revocation or suspension which indicates that the person's permit will be revoked or suspended by a date certain pursuant to that section. The board shall mail the notice preliminary to revocation or suspension to the taxpayer at least 60 days before the date certain.

7099. Disregard by board employee or officer. (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon a finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs, as defined for purposes of Section 7156.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceedings brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

7099.1. Protection of taxpayer communications.(a) (1) With respect to tax advice, the protections of confidentiality that apply to a communication between a client and an attorney, as set forth in Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code, also shall apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a client and an attorney. A federally authorized tax practitioner has the legal obligation and duty to maintain confidentiality with respect to such communications.

(2) Paragraph (1) may only be asserted in any noncriminal tax matter before the State Board of Equalization.

(3) For purposes of this section:

(A) "Federally authorized tax practitioner" means any individual who is authorized under federal law to practice before the Internal Revenue Service if the practice is subject to federal regulation under Section 330 of Title 31 of the United States Code, as provided by federal law as of January 1, 2000.

(B) "Tax advice" means advice given by an individual with respect to a state tax matter, which may include federal tax advice if it relates to the state tax matter. For purposes of this subparagraph, "federal tax advice" means advice given by an individual within the scope of his or her authority to practice before the federal Internal Revenue Service on noncriminal tax matters.

(C) "Tax shelter" means a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if a significant purpose of that partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax.

(b) The privilege under subdivision (a) shall not apply to any written communication between a federally authorized tax practitioner and a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of the corporation in any tax shelter, or in any proceeding to revoke or otherwise discipline any license or right to practice by any governmental agency.

(c) This section shall be operative for communications made on or after the effective date of the act adding this section.

APPENDIX 2

THE MORGAN PROPERTY TAXPAYERS' BILL OF RIGHTS

(Revenue and Taxation Code Sections)

5900. Title. This part shall be known and may be cited as "The Morgan Property Taxpayers' Bill of Rights."

5901. Findings and declarations. The Legislature finds and declares as follows:

(a) Taxes are a sensitive point of contact between citizens and their government, and disputes and disagreements often arise as a result of misunderstandings or miscommunications.

(b) The dissemination of information to taxpayers regarding property taxes and the promotion of enhanced understanding regarding the property tax system will improve the relationship between taxpayers and the government.

(c) The proper assessment and collection of property taxes is essential to local government and the health and welfare of the citizens of this state.

(d) It is the intent of the Legislature to promote the proper assessment and collection of property taxes throughout this state by advancing, to the extent feasible, uniform practices of property tax appraisal and assessment.

5902. Administration. This part shall be administered by the board.

5903. "Advocate." "Advocate" as used in this part means the "Property Taxpayers' Advocate" designated pursuant to Section 5904.

5904. Property Taxpayers' Advocate; responsibilities. (a) The board shall designate a "Property Taxpayers' Advocate." The advocate shall be responsible for reviewing the adequacy of procedures for both of the following:

(1) The distribution of information regarding property tax assessment matters between and among the board, assessors, and taxpayers.

(2) The prompt resolution of board, assessor, and taxpayer inquiries, and taxpayer complaints and problems.

(b) The advocate shall be designated by, and report directly to, the executive officer of the board. The advocate shall at least annually report to the executive officer on the adequacy of existing procedures, or the need for additional or revised procedures, to accomplish the objectives of this part.

(c) Nothing in this part shall be construed to require the board to reassign property tax program responsibilities within its existing organizational structure.

5905. Additional duties. In addition to any other duties imposed by this part, the advocate shall periodically review and report on the adequacy of existing procedures, or the need for additional or revised procedures, with respect to the following:

(a) The development and implementation of educational and informational programs on property tax assessment matters for the benefit of the board and its staff, assessors and their staffs, local boards of equalization and assessment appeals boards, and taxpayers.

(b) The development and availability of property tax informational pamphlets and other written materials that explain, in simple and nontechnical language, all of the following matters:

- (1) Taxation of real and personal property in California.
- (2) Property tax exemptions.
- (3) Supplemental assessments.
- (4) Escape assessments.
- (5) Assessment procedures.
- (6) Taxpayer obligations, responsibilities, and rights.
- (7) Obligations, responsibilities, and rights of property tax authorities, including, but not limited to, the board and assessors.
- (8) Property tax appeal procedures.

5906. Additional duties. (a) The advocate shall undertake, to the extent not duplicative of existing programs, periodic review of property tax statements and other property tax forms prescribed by the board to determine both of the following:

- (1) Whether the forms and their instructions promote or discourage taxpayer compliance.
- (2) Whether the forms or questions therein are necessary and germane to the assessment function.

(b) The advocate shall undertake the review of taxpayer complaints and identify areas of recurrent conflict between taxpayers and assessment officers. This review shall include, but not be limited to, all of the following:

- (1) The adequacy and timeliness of board and assessor responses to taxpayers' written complaints and requests for information.
- (2) The adequacy and timeliness of corrections of the assessment roll, cancellations of taxes, or issuances of refunds after taxpayers have provided legitimate and adequate information demonstrating the propriety of the corrections, cancellations, or refunds, including, but not limited to, the filing of documents required by law to claim these corrections, cancellations, or refunds.
- (3) The timeliness, fairness, and accessibility of hearings and decisions by the board, county boards of equalization, or assessment appeals boards where taxpayers have filed timely applications for assessment appeal.
- (4) The application of penalties and interest to property tax assessments or property tax bills where the penalty or interest is a direct result of the assessor's failure to request specified information or a particular method of reporting information, or where the penalty or interest is a direct result of the taxpayer's good faith reliance on written advice provided by the assessor or the board.

(c) Nothing in this section shall be construed to modify any other provision of law or the California Code of Regulations regarding requirements or limitations with respect to the correction of the assessment roll, the cancellation of taxes, the issuance of refunds, or the imposition of penalties or interest.

(d) The board shall annually conduct a public hearing, soliciting the input of assessors, other local agency representatives, and taxpayers, to address the advocate's annual report pursuant to Section 5904, and to identify means to correct any problems identified in that report.

5907. Employee evaluations. No state or local officer or employees responsible for the appraisal or assessment of property shall be evaluated based solely upon the dollar value of assessments enrolled or property taxes collected. However, nothing in this section shall be construed to prevent an official or employee from being evaluated based upon the propriety and application of the methodology used in arriving at a value determination.

5908. Educational assistance. Upon request of a county assessor or assessors, the advocate, in conjunction with any other programs of the board, shall assist assessors in their efforts to provide education and instruction to their staffs and local taxpayers for purposes of promoting taxpayer understanding and compliance with the property tax laws, and, to the extent feasible, statewide uniformity in the application of property tax laws.

5909. Written rulings. (a) County assessors may respond to a taxpayer's written request for a written ruling as to property tax consequences of an actual or planned particular transaction, or as to the property taxes liability of a specified property. For purposes of statewide uniformity, county assessors may consult with board staff prior to issuing a ruling under this subdivision. Any ruling issued under this subdivision shall notify the taxpayer that the ruling represents the county's current interpretation of applicable law and does not bind the county, except as provided in subdivision (b).

(b) Where a taxpayer's failure to timely report information or pay amounts of tax directly results from the taxpayer's reasonable reliance on the county assessor's written ruling under subdivision (a), the taxpayer shall be relieved of any penalties, or interest assessed or accrued, with respect to property taxes not timely paid as a direct result of the taxpayer's reasonable reliance. A taxpayer's failure to timely report property values or to make a timely payment of property taxes shall be considered to directly result from the taxpayer's reasonable reliance on a written ruling from the assessor under subdivision (a) only if all of the following conditions are met:

(1) The taxpayer has requested in writing that the assessor advise as to the property tax consequences of a particular transaction or as to the property taxes with respect to a particular property, and fully described all relevant facts and circumstances pertaining to that transaction or property.

(2) The assessor has responded in writing and specifically stated the property tax consequences of the transaction or the property taxes with respect to the property.

5910. Report to board. The advocate shall, on or before January 1, 1994, make specific recommendations to the board with respect to standardizing interest rates applicable to escape assessments and refunds of property taxes, and statutes of limitations, so as to place property taxpayers on an equal basis with taxing authorities.

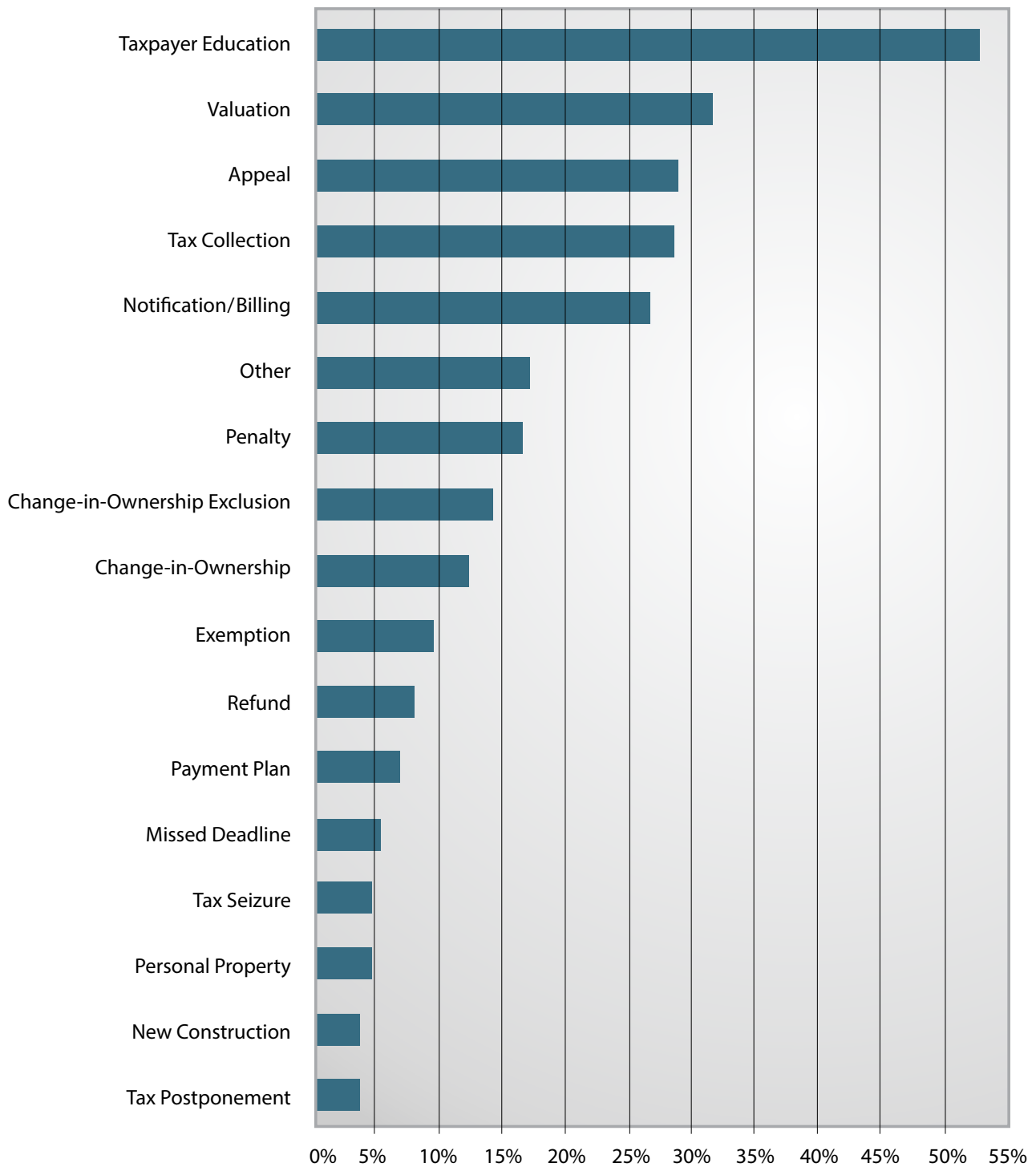
5911. Legislative intent. It is the intent of the Legislature in enacting this part to ensure that:

(a) Taxpayers are provided fair and understandable explanations of their rights and duties with respect to property taxation, prompt resolution of legitimate questions and appeals regarding their property taxes, and prompt corrections when errors have occurred in property tax assessments.

(b) The board designate a taxpayer's advocate position independent of, but not duplicative of, the board's existing property tax programs, to be specifically responsible for reviewing property tax matters from the viewpoint of the taxpayer, and to review and report on, and to recommend to the board's executive officer any necessary changes with respect to, property tax matters as described in this part.

APPENDIX 3

MOST COMMON ISSUES IN PROPERTY TAX CASES



Note: Individual property tax cases may involve a variety of issues that caused the taxpayer to contact the Taxpayers' Rights Advocate Office. All issues in each case were tracked and the most common issues are displayed here.

APPENDIX 4

OUTCOME OF BUSINESS TAXES CASES

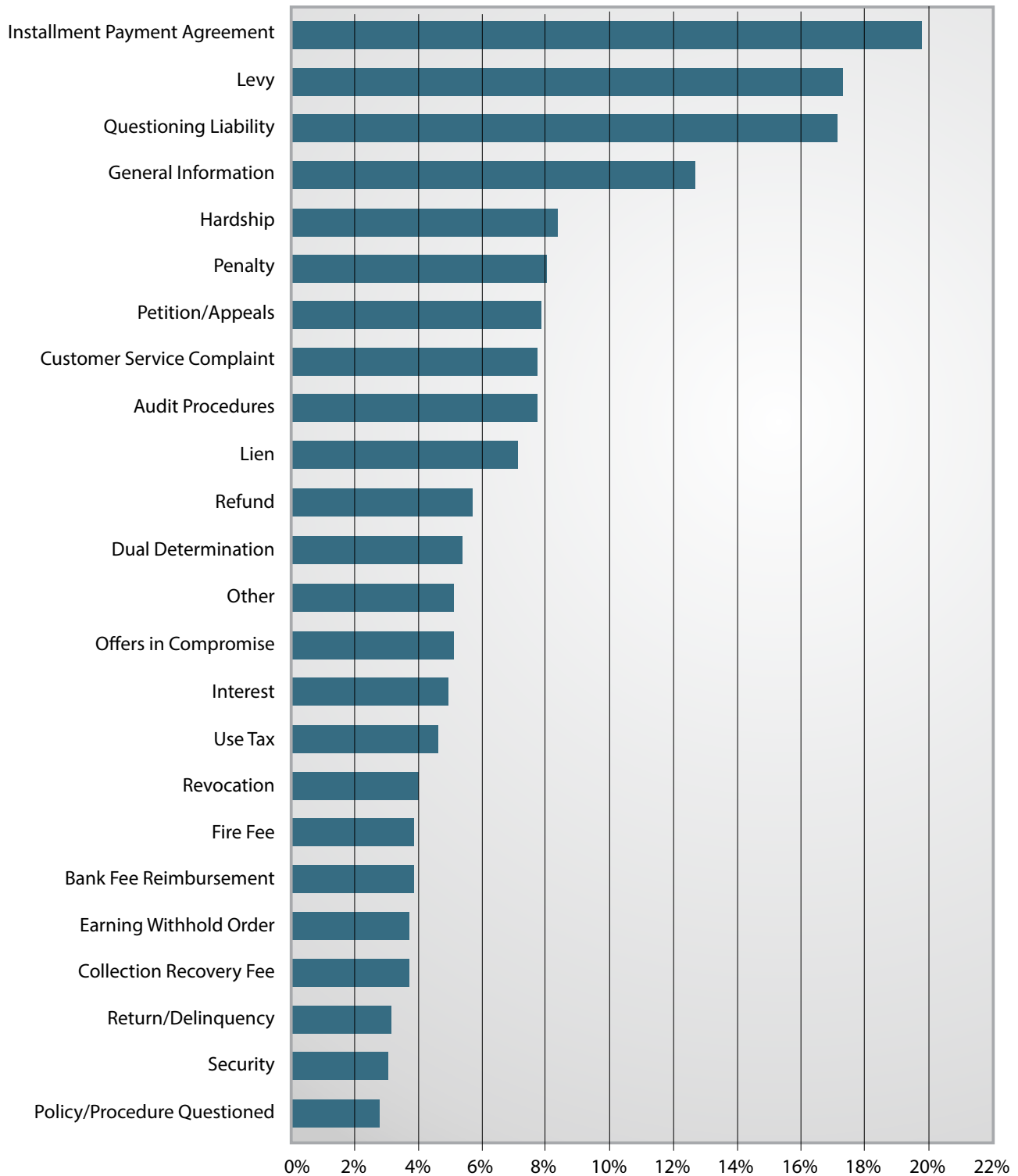
Office of Origin	Cases by Issue Type			Total Cases		Customer Service Concerns	Disagreed with Staff Case Handling	Case Handling Changed
	Audit	Compliance	Other					
Norwalk (AA)	3	11	1	15		1	0	5
Van Nuys (AC)	6	16	0	22		0	0	6
West Covina (AP)	2	4	1	7		1	0	0
Ventura (AR)	3	10	0	13		1	1	2
Culver City (AS)	2	24	0	26		2	1	13
San Francisco (BH)	7	6	0	13		1	1	2
Oakland (CH)	6	9	0	15		2	1	6
Fresno (DF)	1	16	1	18		1	1	5
Irvine (EA)	9	35	0	44		11	2	15
Riverside (EH)	2	32	4	38		2	0	10
San Diego (FH)	4	16	1	21		2	0	6
San Jose (GH)	1	25	0	26		3	0	12
Santa Rosa (JH)	1	21	0	22		3	0	7
Sacramento (KH)	5	43	0	48		2	2	14
Out-of-State (OH)	0	2	1	3		0	0	0
Appeals Division	5	7	0	12		2	0	3
Audit Determination and Refund Section	1	18	1	20		0	0	2
Centralized Collection Section	8	76	1	85		5	7	30
Consumer Use Tax Section	0	7	1	8		3	0	0
Investigations	0	1	0	1		0	0	0
Offers in Compromise Section	0	5	0	5		0	0	0
Petitions Section	1	4	0	5		0	0	2
Return Analysis Unit	1	5	1	7		0	0	0
Settlement Section	1	1	0	2		0	1	1
Special Operations Branch	1	10	0	11		0	0	3
Special Taxes Policy and Compliance Division	0	45	5	50		2	0	1
Statewide Compliance and Outreach Program	1	0	0	1		1	0	0
Taxpayer Information Section	0	0	2	2		0	0	0
Use Tax Administration Section	1	7	0	8		1	0	2
Other Government Agencies	0	18	24	42		1	0	0
Other(1)	1	20	35	56		3	0	1
Total	73	494	79	646		50	17	148

Notes: A number of outcomes are tracked for business taxes cases, with the three most significant outcomes displayed here.

(1)The category of "Other" includes: various Headquarters units for which the number of cases is too small to track separately; as well as cases that have no particular office of origin—for example, contacts from the public asking questions about how tax applies or requesting general information.

APPENDIX 5

MOST COMMON ISSUES IN BUSINESS TAXES CASES



Note: Individual business taxes cases may involve a variety of issues that caused the taxpayer to contact the Taxpayers' Rights Advocate Office. All issues in each case were tracked and the most common issues are displayed here.

TAXPAYERS' RIGHTS ADVOCATE OFFICE

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